ARUNACHELLAM CHETTIAR v. KADIR ROWTHEN.

but runs either from the close of the fasli or from the date of the tender of patta. It is true that the tender of patta is a condition precedent to proceedings for the recovery of rent, but there is nothing either in the Rent Recovery Act, or in the Limitation Act, or in the decision of the Privy Council which is relied upon, to render the date of such tender, in a case like the present, the date from which limitation begins to run.

There is nothing to prevent the landlord from tendering the patta early in the fasli, and it would be strange if his delay in doing so should operate to postpone the starting point of limitation after the rent was ascertained and was payable.

We must therefore dismiss the petition with costs.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice and Mr. Justice Benson.

1906 April 4, 11.

THOMAS (PRISONER), APPELLANT,

v.

EMPEROR, RESPONDENT.*

Criminal Procedure Code Act V of 1898, ss. 222, 234—*Criminal breach of trust—Joinder in one trial of charges for two distinct items with another for a gross sum is not illegal—Construction of statute.*

Under section 222 of the Code of Criminal Procedure a charge of criminal breach of trust in respect of the gross sum, without specifying the items, is a charge for one offence within the meaning of section 234.

Section 222 of the Code of Criminal Procedure does not apply only to cases where there is a general deficiency and the prosecution is unable to specify the particular items of the deficiency, but also to cases where the items may be, but are not, specified.

The joinder in one trial of charges of criminal breach of trust in respect of two distinct items with a charge in respect of a gross sum (the items constituting which may be but are not specified) is a joinder of only three charges, and is not bad as contravening the provisions of section 234 of the Code of Criminal Procedure.

"The essence of a Code is to be exhaustive on the matter in respect of which it declares the law and it is not the province of a Judge to disregard or go outside the enactment according to its true construction."

Subrahmania Ayyar v. *King-Emperor*, (I.L.R., 25 Mad., 61) distinguished.

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* Criminal Appeal No. 8 of 1906, presented against the sentence of L. E. Buckley, Esq., Sessions Judge of Nilgiris Division, in Case No. 6 of the Calendar for 1905.

IN this case the accused was tried on charges of criminal breach of trust in respect of two cheques for Rs. 18 and 54 and also on another charge in respect of a sum of Rs. 60 made up of three distinct items. The charge last-mentioned, however, was in respect of the gross sum of Rs. 60 and did not specify the items of which it was composed.

The accused was convicted on the first two charges and acquitted on the third.

On appeal to the High Court by the accused it was contended that the trial was in fact on five distinct charges, as the last charge must be treated as a charge of three distinct offences and that the trial was accordingly in contravention of section 234 of the Code of Criminal Procedure.

Mr. *A. S. Cowdell* for appellant.

The Public Prosecutor for respondent.

JUDGMENT.—In this case the appellant was the head clerk and cashier in the firm of Rungiah Gowndan & Co. He has been convicted of criminal breach of trust by a servant under section 408 of the Indian Penal Code, in respect of two cheques for Rs. 18 and Rs. 54, respectively. He has been acquitted on a similar charge with respect to a sum of Rs. 60. This charge, as at first framed, was in respect of Rs. 611-11-0 and the items said to have been comprised in that sum numbered some 15 or 20 small sums. At the trial this charge was amended by reducing the amount to Rs. 60, which is the total of three items which, though not specified in the charge, might have been specified, and in respect of which separate evidence was, in fact, given. This amendment of the charge simplified it in the interest of the accused and it was clearly legal with reference to section 227, Criminal Procedure Code.

But the chief point taken in appeal is that as the sum of Rs. 60 in the third charge, as amended, was, in fact, made up of three separate items which could have been specified and which might have each formed the subject of a separate charge, the accused was really called on to defend himself against five charges in all (including the charges in respect of the two cheques), and that the trial was therefore illegal with reference to section 234, Criminal Procedure Code, and the decision of the Privy Council in the case of *Subrahmania Ayyar* v. *King-Emperor*(1). The case relied on has

(1) I.L.R., 25 Mad., 61.

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no application, since it did not relate to an offence of criminal breach of trust for which section 222, Criminal Procedure Code, makes a special provision which is in the nature of an exception to the general rule. The general rule is that stated in section 233 of the Criminal Procedure Code, viz., that "for every distinct offence of which a person is accused there shall be a separate charge and every such charge shall be tried separately," except in certain cases. One of these cases is that stated in section 234 which allows three separate offences of the same kind committed within the space of twelve months to be charged and tried at one trial, section 222 makes, in effect, a further extension of this rule by enacting that "when an accused person is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items on exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234, provided that the time included between the first and last of such dates shall not exceed one year." In the present case the third charge as amended, and even as it originally stood, must, therefore, be deemed to be a charge of one offence only, and section 234 allows three offences of the same kind to be tried together, provided all were committed within the space of twelve months from first to last. In the present case the two offences in respect of the two cheques and the offence in respect of the sum of Rs 60 were all committed within that space of time, and the trial for all three offences together was therefore legal. We cannot accede to the argument of the learned counsel for the appellant that section 222 is only intended to apply to cases where there is a general deficiency in an account and the prosecution is unable to specify the particular items of the deficiency. Had the Legislature intended to provide for such cases only, it could have found apt words in which to express the intention. The words used do not contain any such limitation and we are not justified in reading into the section a limitation which its language will not support. As observed by the Privy Council in a recent case "The essence of a Code is to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true

construction" [*Gokul Mandar* v. *Pudmanund Singh*(1)]. We may add that the accused is not in a worse, but is in a better, position when the items can be, and are, specified, rather than when they cannot be, or are not, specified. The view that we take is supported by the decisions of the High Courts of both Allahabad and Calcutta [*Emperor* v. *Gulzari Lal*(2), *Emperor* v. *Ishtiaq Ahmad*(3), and *Samiruddin Sarkar* v. *Nibaran Chandra Ghose*(4,] and we are not aware that a contrary view has been taken by any of the High Courts.

The trial was therefore not illegal by reason of the charges on which the accused was tried. On the merits we are satisfied that the accused was rightly convicted in respect of the two cheques which formed the subject of the first and second charges.

We dismiss the appeal.

APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Moore.

SREEMAN KUMARA TIRUMALRAJA BAHADUR, RAJAH OF KARVETNAGAR, PETITIONER,

v.

SOWCAR LODD GOVIND DOSS KRISHNA DOSS, RESPONDENT.*

1906 July 16, 25, 30.

Criminal Procedure Code Act V of 1898, s. 145—Enquiry to be held before issuing preliminary order under - Jurisdiction of Magistrate—Failure of jurisdiction where Magistrate refuses to receive evidence which party is entitled to adduce under s. 145 (5).

In order that a Magistrate may have jurisdiction to act under section 145 of the Code of Criminal Procedure, he must be satisfied from a Police report, or other information, that a dispute likely to cause a breach of the peace exists concerning any land, etc. Where there is no Police report the statement of interested parties ought to be received with great caution and ought not to be acted upon unless they are corroborated by the testimony of less interested persons. The opposite party also, ought to be given an opportunity of

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(1) L.R., 29 I.A., 196. (2) I.L.R., 24 All., 254.
(3) I.L.R., 27 All., 69. (4) I L.R 31 Calc., 928 at p. 931.

* Criminal Revision Case No. 209 of 1906, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of Stanley Rice, Esq., District Magistrate of North Arcot in Criminal Miscellaneous Petition No. 1 of 1906.